exceptions are interesting in that they typify the difficulties of courts in deciding this question without any definite rules.[14]

A recent case on a particular branch of this subject is *Johnson* v. *Braham*.[15] There the question arose between the principal and her agent as to whether the latter was liable, by his negligence, for the profits she might have made save for his act. And it was there held that the true measure of damages is the loss that would have been avoided save for the agent's negligence, and not the amount the principal might have made.[16] In cases of this character the agent must pay the actual loss which necessarily results.[17] While in this case the principal was allowed to recover for loss of time, that would come under the general principles applicable to contract actions generally—that the measure is the actual and proximate results, provable with some certainty, arising from the breach of the contract.

R. T. B.

EVIDENCE—OFFICIAL RECORDS—CORONER'S INQUEST—In a very recent case not yet reported the verdict of a coroner's jury was sought to be introduced as evidence that the deceased had met his death in the manner alleged by the plaintiff. Upon the point at issue the authorities, while by no means equally divided, are conflicting.

The reasons for the admission of the verdict of the coroner are thus stated by Starkie:[1] "Such inquisitions are of a public nature, and, taken under competent authority to ascertain a matter of public interest, are, upon principles already announced, admissible in evidence against all the world. They are very analogous to adjudications *in rem* being made on behalf of the public; no one is properly a stranger to them and all who can be affected by them usually have the power of contesting them." Such seems to be the English practice today.

In America the result of the cases can be thus summarized. (1) In homicide cases the verdict of the coroner is clearly inadmissible in every state in the Union except Louisiana. In the last they are merely admitted as proof of death. The verdict of the coroner,

[14] While these rules were formulated in Hadley v. Baxendale, *supra*, they have been generally accepted since that time, with little, if any, addition. See, Cory v. Thames Shipbuilding Co., L. R. 3 Q. B. 181 (Eng. 1868); Griffin v. Colver, 16 N. Y. 489 (1858); Clyde Coal Co. v. P. & L. E. R. R. Co., 226 Pa. 391 (1910).

[15] 115 L. T. 76 (Eng. 1916).

[16] In *acc.* Chr. Salvesen Co. v. Rederi Aktiebolaget Nordstjernan, 92 L. T. 575 (Eng. 1905); Bell v. Cunningham, 3 Pet. 69 (U. S. 1830).

[17] Cassaboglou v. Gibbs, 48 L. T. 850 (Eng. 1883); Mayne, Damages (8th Ed.), p. 641 ff.

[1] Treatise on Evidence, 10th Ed., p. 403.

it is generally held, is merely advisory to the officers charged with the execution of public justice. . . . It has no probative effect and is binding upon no one as a judgment. It can prejudice the rights of no one and is therefore not subject to be reversed, set aside or quashed in a superior court, either at the instance of the party accused by it or by any other person.[2] A verdict of guilty by a coroner's jury is of equal value with the indictment of a grand jury or a sworn complaint before a magistrate. It is not even *prima facie* evidence against the accused on trial.[3]

The chief objections to its admission in a criminal action are obvious. The inquest is an *ex parte* proceeding; it affords no opportunity to the accused to cross-examine the witnesses against him, and, in the last analysis, it is merely the opinion of a petty judicial or *quasi*-judicial officer upon a fact in issue before the court.[4] Testimony rendered before him will be reiterated before the court, besides a great deal of other evidence which the passage of time and the diligence of counsel may bring forth. "To admit the verdict of a coroner rendered in the absence of the accused, without the aid of counsel and often in the absence of the most material witnesses . . . to influence and perhaps to control the verdict of the jury, would lead to a subversion and a final overthrow of the jury system." [5]

(2) In life insurance cases the great majority of states, Illinois, Iowa and Mississippi excepted, reject the coroner's verdict. The Illinois doctrine is best summarized in *The United States Life Insurance Co.* v. *Bocke*.[6] In that case, it may be noted, the Supreme Court reversed because of the failure of the lower court to admit the verdict. The Illinois decisions, however, have been put by some of the text writers on the Illinois practice of sealing the record of the inquest and filing it with the court.[7] The courts which have rejected the verdict have done so on various grounds. They have distinguished the American inquisition from the English and have pointed out that the former is not a judicial proceeding.[8] In addition, it has been urged that as a matter of evidence a coroner's proceeding is *res inter alios acta,* and upon no rule of evidence should

[2] Smalls v. State, 101 Ga. 570 (1897).

[3] Cresfield v. Perrine, 15 Hun 200 (N. Y. 1878).

[4] Colquit v. State, 107 Tenn. 381 (1901).

[5] Whitechurst v. Commonwealth, 79 Vt. 556 (1907).

[6] 129 Ill. Sup. 557 (1889).

[7] Foster v. Shepherd, 258 Ill. 164-182 (1913).

[8] In Germania Life Ins. Co. v. Lewin, 24 Col. 43 (1897), the court said: "It is claimed that the requisitions by coroners were admissible in evidence at common law, and hence now admissible in jurisdictions where the common law rule has not been changed by statute. The English rule, however, grew out of the fact that the inquisition was a judicial proceeding authorized by statute, but this reason is without force under our systems

it be admissible against a third party, stranger to the proceeding.[9] The purpose of the inquest is merely to detect crime and to take the preliminary steps to secure a trial of the supposed offender.[10] It may not be public; none but counsel for the state and for the accused have a right to examine the witnesses, and there is no means by which the findings may be reversed or set aside.[11] "In case of death under suspicious circumstances or resulting from an accident, the rule permitting inquisitions to be used in evidence would result in a race and scramble to secure a favorable coroner's verdict that would influence and perhaps control in case suits should be instituted against life insurance companies upon policies of insurance and in cases of accidents occurring as a result of negligence on the part of corporations operating railroads, street car lines, mining of coal or precious metals, *etc.* Law writers of late have frequently animadverted upon the carelessness with which such inquests are frequently conducted, and to allow inquisitions to be used in a suit between private parties upon a cause of action growing out of the death of the deceased would introduce an element of uncertainty into the practice which would be contrary to public policy and pernicious in the extreme." [12] A number of the courts have stressed the fact that the purpose of the American inquisition is merely to ascertain the cause of death with a view to a criminal prosecution should the jury find that death had been caused by unlawful violence.[13]

It is submitted that upon no principle of law or of public policy should such a verdict be admitted in a civil suit. The question must be decided ultimately in any jurisdiction with reference to the functions of the coroner under the local statutes. The curious evolution of the coroner's office, from a judicial post of no mean importance to a petty administrative position, must be kept in mind. In a few states it still retains something of its former usefulness; in a large majority of American jurisdictions, however, it has been relegated to insignificance in the administration of the criminal law. In not a few, its total abolition has been seriously urged by Bench and Bar.

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of government. Moreover, under our constitution no part of the judicial power of a state could be vested in the coroner, and hence the inquisition sought to be introduced into this case was extra-judicially taken and should have been excluded."

[9] Boehme v. The Woodmen of the World, 85 S. W. 445; affirming 84 S. W. 422 (Texas 1904).

[10] State v. The County Commission, 54 Md. 426 (1880).

[11] Boehme v. The Woodmen of the World, *supra,* n. 9.

[12] Germania Life Ins. Co. v. Lewin, *supra,* n. 8.

[13] Miller v. Cambria County, 29 Pa. Super. Ct. 166 (1905).